

Testimony of
Lilly Ledbetter

September 23, 2008

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BEFORE THE COMMITTEE ON THE JUDICIARY UNITED STATES SENATE

HEARING:

BARRIERS TO JUSTICE: EXAMINING EQUAL PAY FOR EQUAL WORK

SEPTEMBER 23, 2008

My name is Lilly Ledbetter, and I appreciate the opportunity to testify at this Committee's hearing on Barriers to Justice: Examining Equal Pay for Equal Work. I am sorry to say that, in my case, the barriers that Eleventh Circuit and five members of the Supreme Court put in the way are still standing.

I began working as a supervisor in the Goodyear tire plant in Gadsden, Alabama, in 1979. I worked for Goodyear for almost twenty years. I worked hard, and I was good at my job. For example, Goodyear gave me a "Top Performance Award" in 1996. But it wasn't easy. I was only one of a handful of women supervisors during the time I worked for Goodyear, and I definitely faced obstacles and harassment that my male peers did not have to endure.

But for virtually all of the time I worked at Goodyear, I did not know that I was also being subjected to pay discrimination. When I first started at Goodyear, the managers got the same pay, so I knew I was getting as much as the men. But then Goodyear switched to a new pay system based on performance. After that, people doing the same jobs could get paid differently. Of course, Goodyear had all the facts - it knew who was making what, made the decisions about how much to pay each of the managers, and knew whether its pay system was really based on performance or on something else.

But the workers didn't know. In fact, Goodyear kept what everyone got paid strictly confidential. No one was allowed to discuss their salaries. Over the following years, sometimes I got raises, sometimes I didn't. Some of the raises seemed pretty good, percentage-wise, but I didn't know if they were as good as the raises other people were getting.

I only started to get some hard evidence of what men were making when someone left an anonymous note in my mailbox at work, showing that three other male managers were getting paid between 15% and 40% more than I was. That discrimination harmed my family then, and it continues to affect me today, as my retirement income is substantially lower than what it could - and should - have been.

I thought about just moving on, but in the end, I could not let Goodyear get away with their discrimination. So I filed a complaint with the EEOC in 1998, only a few days after I received that note, and thereafter I filed a lawsuit in federal court in Alabama.

It wasn't until I filed my case and got information through the discovery process that I finally learned what Goodyear had known all along: that it was paying me a lot less than all of the men doing the same work. Goodyear didn't deny that. But it claimed that it was because I was a poor performer and consequently got smaller raises than all the men who did better. That wasn't true, and the jury didn't believe it. At the end of the trial, the jury found that Goodyear had discriminated against me in violation of Title VII. The jury awarded me backpay as well as more than \$3 million in compensatory and punitive damages.

I can tell you that that was a good moment. It showed that the jury took my civil rights seriously and wasn't going to stand for a national employer like Goodyear paying me less than others just because I was a woman. And it seemed like a large enough award that a big company like Goodyear might feel the sting and think better of it before discriminating like that again.

I was very disappointed when the trial judge was forced to reduce the damages award - which he did because of Title VII's \$300,000 statutory cap. But the trial judge said that the jury verdict was "abundantly supported by the evidence" --vindicating that what had happened to me was wrong and violated our national civil rights laws.

That all changed when Goodyear appealed the verdict. The 11th Circuit Court of Appeals - and then five Justices of the Supreme Court - ruled that although I was continuing to be paid less than the men right up to the date I filed my charge, I had complained too late. According to these judges, any pay discrimination complaint must be filed within about six months of the first time a worker gets a discriminatory paycheck - no matter how long the discrimination continues, no matter how much damage it causes the worker, and no matter how much the employer knows that it's getting away with, and profiting from, its unlawful conduct. Justice Alito and four other Supreme Court justices sent the message that it's just tough luck for the employee - if she doesn't complain at the time of the employer's original decision, the employer gets to pay her less for the rest of her career.

I was, frankly, shocked by this ruling. Justice Ginsburg hit the nail on the head when she said that the majority's rule just doesn't make sense in the real world. Like Goodyear, many companies keep salary

information confidential. And you can't expect people to go around asking their coworkers how much money they're making. At a lot of places, that could get you fired. The Supreme Court took a law that was supposed to protect people like me, and created a loophole that employers can drive a truck through.

Equally important, the higher courts rejected what had been the law in every part of the country before the 11th Circuit ruled in my case. I'm no lawyer, but my counsel told me that it was settled law that an employee could challenge each and every discriminatory paycheck she received. That approach seems to me to be not only right for the real world, but also the only sensible interpretation of the law: each time the employer pays you less on the basis of your sex, it's an act of discrimination that the employer should correct or be challenged on. In fact, the law was so clear that the EEOC intervened on my side before the 11th Circuit, acting to defend my jury verdict.

But unfortunately, as Mr. Mehri will tell you, what happened to me is all too common in employment discrimination cases that get to the appellate courts. In fact, I understand that Mr. Mehri's report says that my case was brought in the very worst area of the country - the 11th Circuit --for those subject to employment discrimination. But in every circuit court, far too many workers are being denied their rights today, as well as the financial awards that compensate for what the workers have lost because of discrimination.

That's certainly true for me. Goodyear will never have to pay me what it cheated me out of. The jury in my case found that I lost approximately \$224,000 in salary over time. And I know that I've lost even more than that, since those lower paychecks were used to calculate my pension and Social Security benefits.

But my case is only the tip of the iceberg. With regard to pay discrimination, there are lots of other companies out there that got the Supreme Court's message loud and clear: they will not be punished for discriminating, if they do it long enough and cover it up well enough. Scores of women around the country have shared their stories with me and told me how they were paid less for doing the same job as their male colleagues - and now there's nothing they can do about it. What is more, the legal repercussions from my case continue. For example, the Supreme Court is all set to hear a case this fall that raises the question whether employers who denied women credit for maternity leave in the 1970s can discriminate against them now in calculating their pensions and retirement eligibility. And I understand that since the Supreme Court's ruling in my case, federal courts have applied it to bar all different kinds of cases, not just pay discrimination cases.

The Senate can restore the promise that the Supreme Court broke in my case by enacting the Lilly Ledbetter Fair Pay Act, which would make sure that people can challenge discriminatory paychecks as long as they continue to receive them. But the Senate must also more broadly restore the promise of

the employment discrimination laws by insisting that judges they confirm understand the real world and are committed to upholding longstanding legal protections. As I have learned all too well, it matters who sits on our courts - to me, and to workers all around the country.

My case is over. I will never receive the pay I deserve. But I will feel vindicated once again if I can play even the smallest role in ensuring that what happened to me will not happen to anyone else. I am honored to be here today and thank you for the opportunity to testify before this Committee.